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1 A. It's from press -- I gave the appropriate  
2 citations starting on page 4 and going through page  
3 6, press releases, marketing material, news  
4 releases, actual -- the expedited motion for  
5 preliminary injunctive relief was cited and also  
6 the transcript in the pending universal service  
7 case was cited.

8 COMMISSIONER WEFALD: Thank you.

9 MR. BINEK: Commissioner Reinbold.

10 COMMISSIONER REINBOLD: Mr. Examiner, I  
11 needed to be absent for a little bit during the  
12 beginning of this witness's testimony on other  
13 Commission business, so I have no questions at this  
14 time and I'll catch up with the scope of his  
15 testimony at another time. Thank you.

16 MR. BINEK: Commissioner Hagen.

17 COMMISSIONER HAGEN: Thank you.

18 EXAMINATION

19 BY COMMISSIONER HAGEN:

20 Q. You're a good witness. Good to have you  
21 here, as also Western Wireless. Good to have both  
22 of you.

23 Just for the record, I've read the same  
24 FCC document that Commissioner Wefald referred to,  
25 the FCC 96-283. I'll read it again. I don't have

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1 it memorized yet, but I probably will have before  
2 we get done. A lot of stuff in there. Just  
3 relating to that, there's no final order yet  
4 regarding that particular Notice of Proposed  
5 Further Rulemaking; is that correct?

6 A. That is my understanding.

7 Q. And that order was adopted -- 96-283 was  
8 adopted June 27th, 1996, and released August 1st,  
9 '96?

10 A. Yes. The First Report and Order was  
11 adopted by the FCC on that date, and then I believe  
12 your question was with regard to the Further Notice  
13 of Proposed Rulemaking.

14 Q. Yes.

15 A. Yes, that was issued the same day.

16 Q. Is there any further action by the FCC  
17 regarding fixed wireless in any universal service  
18 joint board or any joint board?

19 A. At the time of January 7th there was  
20 none. It was considered a backburner issue.  
21 Perhaps with the events that have transpired, it  
22 might be more in their priority.

23 Q. They have issued no universal -- they've  
24 issued no joint board decision that you're aware  
25 of, the FCC, regarding this since January 7th?

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1 A. No, they have not issued anything of that  
2 nature since then. It's open, on the backburner.

3 Q. Thank you. You referred to the Angel  
4 project. That's the Chicago project by AT&T --  
5 Chicago area?

6 A. That's one of the -- yes, that's one of  
7 the test areas that AT&T is using.

8 Q. Did AT&T get a state PC&N from the  
9 Illinois Commerce Commission?

10 A. I do not know whether they did or not. I  
11 do know of other fixed wireless service offerings  
12 within the jurisdiction of the United States  
13 government where a certificate or permission from  
14 the regulatory board was granted.

15 Q. If the Angel is similar to the Regent  
16 fixed wireless, then it would seem logical they  
17 would have to have a PC&N if they had to get a  
18 PC&N.

19 A. It would seem that they would need some  
20 type of -- some type of permission. The case that  
21 I referred to that I have some direct knowledge  
22 about is a case where a fixed wireless service,  
23 home phone service is being deployed by a CMRS  
24 wireless carrier and they do have permission from  
25 the Commission to have that -- to offer that

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1 service in that jurisdiction.

2 Q. I see. What about the Antelope Valley,  
3 Nevada, was that a PC&N?

4 A. My understanding of the Antelope Valley is  
5 that it may very well fall in a joint agreement  
6 with Western Wireless and U S West. I'm not the  
7 person to ask that question. I'm sorry. I do not  
8 have the specific details. The only information  
9 that I have about that particular offering was what  
10 I read in the transcript of the universal service  
11 case.

12 Q. To really find out, we would have to check  
13 with the Nevada Commission?

14 A. Yes, you would.

15 Q. Thank you. You referred several places to  
16 BETRS, and if I understand that right, to operate  
17 with BETRS in any way you have to have a state  
18 certificate?

19 A. That's my understanding, yes.

20 Q. And as far as you know, yes or no or  
21 whatever, is that the way it is across the United  
22 States in other commissions?

23 A. That's my understanding.

24 Q. Okay. Thank you. If the box over here --  
25 that's probably a better word for me to understand

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1 than the other definition. If the box over here  
2 were small enough to get in your pocket, would that  
3 mean that it would be -- it would not be -- there  
4 would not be a need for a PC&N because it would not  
5 be transportable -- or it would be -- it would be  
6 transportable then?

7 A. The concept of whether the box is as small  
8 as the phone that Mr. Sebby has placed on top and  
9 it's actually more mobile -- or more mobile in that  
10 case really hinges on the intent of the box use.

11 Q. Not the size?

12 A. I don't know if it would or not. All I'm  
13 saying is that the definition of a mobile station  
14 says that the mobile station can move and  
15 ordinarily does move. That's what defines a mobile  
16 station according to the -- according to the  
17 Telecommunications Act.

18 Q. Your testimony is that this box is not  
19 intended normally to be --

20 A. Yes. My understanding is that box is  
21 certainly transportable, but not ordinarily move --  
22 not intended to be used on a movable basis. Its  
23 intent is to be a -- put up on a wall. It has  
24 mounting brackets behind it. It does not have a  
25 handle. That gives me the indication that it's a

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1 fixed unit that can certainly be transported, but  
2 is intended to be fixed at a location.

3 Q. Thank you. At the end of your testimony  
4 you state that Western Wireless must have a state  
5 PC&N from this Commission and also follow all other  
6 state and federal laws. What are you referring to  
7 by other state --

8 A. Whatever -- yes. Whatever -- that's on  
9 page 16 of my direct testimony. I'm indicating  
10 that I'm not at this point able to address what  
11 regulatory -- what laws, federal or state --  
12 additional state or federal laws Western Wireless  
13 should -- should comply with. That's actually  
14 subject to a variety of issues that I'm not  
15 prepared to address at this time.

16 Q. Thank you. One last question. Recently  
17 the United States Supreme Court issued a decision  
18 in the Iowa case.

19 A. Yes, they did.

20 Q. And they said in effect that the FCC has  
21 jurisdiction over things like unbundling.

22 A. Yes.

23 Q. Is there anything in that case that  
24 applies here?

25 A. My understanding is that there is not.

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1 Q. They didn't cover fixed wireless?

2 A. The Supreme Court case addresses the issue  
3 that the FCC had general jurisdiction over various  
4 issues that were before the Eighth Circuit Court of  
5 Appeals in St. Louis. Those issues related -- were  
6 included, but not -- included the following,  
7 dialing -- intraLATA dialing parity, the pricing  
8 elements for unbundled network elements, how to  
9 define an unbundled network element or a network  
10 element as the FCC did. Those types of issues have  
11 -- the jurisdictional issue was resolved by the  
12 Supreme Court, the case has been remanded back to  
13 the Eighth Circuit Court for analysis.

14 Q. And that's where it sits?

15 A. That's where it sits.

16 COMMISSIONER HAGEN: Thank you. That's  
17 all I have.

18 MR. BINEK: Mr. Maus, do you have any  
19 redirect?

20 MR. MAUS: No, I don't.

21 MR. BINEK: I will allow Mr. DeJordy and  
22 Mr. Johnson to ask questions that may have come up  
23 as a result of questions and answers that were  
24 given to -- or responses to questions from the  
25 Commissioners and other parties. So within those

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1 limits, Mr. DeJordy, do you have any further  
2 questions?

3 MR. DEJORDY: Yes, just a couple.

4 RECROSS-EXAMINATION

5 BY MR. DEJORDY:

6 Q. You indicated in response to a question by  
7 Mr. Johnson that you did not believe that wireless  
8 residential service was incidental; is that  
9 correct?

10 A. Yes, I believe that is correct, without  
11 referring back to the record.

12 Q. And I believe you also said that you do --  
13 you continued with that statement and you said that  
14 the FCC also does not consider fixed service on  
15 wireless residential service as incidental; is that  
16 correct?

17 A. Yes. I was referring back to the  
18 definition -- the actual citation in my direct  
19 testimony where they talked about BETRS type of  
20 fixed service using CMRS spectrum or CMRS  
21 frequencies as not incidental for purposes of the  
22 definition of mobile service. So --

23 Q. Your response was in relation to BETRS; is  
24 that correct then?

25 A. It was in relation to BETRS type of fixed

1 service.

2 Q. You would agree, though, that a fixed  
3 service that is incidental to a mobile service  
4 offering is considered CMRS and not subject to  
5 state entry and rate regulation?

6 A. The incidental service -- we have to be  
7 careful. I don't know if the incidental service  
8 that -- you're referring to "incidental" as being  
9 incidental to the operations of the corporation  
10 that's offering the fixed service. I don't -- I  
11 don't subscribe to that interpretation of what  
12 "incidental" means. My view is that incidental  
13 actually refers to the service being offered to the  
14 customer, whether the customer believes that to be  
15 incidental. But that's my view.

16 Q. Okay. Just I guess in closing on this  
17 issue, we probably disagree on what is incidental,  
18 but I think we do agree, is it safe to say, that a  
19 fixed service that is incidental to a CMRS offering  
20 is not subject to state entry and rate regulation?

21 A. Normally that is the case.

22 MR. DEJORDY: Okay. I have no further  
23 questions.

24 MR. BINEK: Mr. Johnson?

25 MR. JOHNSON: Nothing here.

1 MR. BINEK: Any of the Commissioners have  
2 any questions?

3 COMMISSIONER WEFALD: No.

4 MR. BINEK: The witness is excused. You  
5 may call your next witness.

6 MR. MAUS: We would call Dan Wilhelmson.

7 MR. BINEK: I'm required to inform you  
8 that it is a Class C felony, punishable by up to a  
9 \$5,000 fine and five years imprisonment, to  
10 knowingly make false statements or to affirm the  
11 truth of a false statement made while under oath.  
12 Being advised of this penalty for perjury, do you  
13 affirm that the testimony you're about to offer  
14 will be the truth?

15 THE WITNESS: I do.

16 MR. BINEK: State your name for the  
17 record, please.

18 THE WITNESS: My name is L. Dan  
19 Wilhelmson.

20 MR. BINEK: You may proceed, Mr. Maus.

21 L. DAN WILHELMSON,  
22 having been first duly sworn, was examined and  
23 testified as follows:

24 DIRECT EXAMINATION

25 BY MR. MAUS:

1 Q. Please tell us what your occupation is and  
2 your duties.

3 A. I'm employed by Consolidated Telephone  
4 cooperative as its CEO and general manager. My  
5 responsibilities include the management and  
6 decisionmaking for the total operations of  
7 Consolidated Telephone Cooperative and its  
8 subsidiary companies. I have been employed at  
9 Consolidated since 1986, and prior to that I was  
10 employed at Northwestern Bell or U S West 27 years.

11 Q. What is Consolidated Telephone Cooperative  
12 and where is it located?

13 A. Consolidated Telephone Cooperative is a  
14 cooperative owned by its members. It is a local  
15 exchange carrier as defined by the North Dakota  
16 Public Service Commission and the Federal  
17 Communications Commission. Consolidated is  
18 headquartered in Dickinson, North Dakota. It  
19 serves 3800 subscribers over 6800 square miles in  
20 Adams, Billings, Bowman, Dunn, Hettinger, McKenzie,  
21 Slope, and Stark Counties in southwestern North  
22 Dakota.

23 Q. Is the Regent exchange in your territory?

24 A. Yes, it is.

25 Q. How big is the Regent exchange and how

1 many access lines do you have in Regent?

2 A. We have a map that lays out the outline of  
3 the Regent exchange. It is --

4 Q. Excuse me, Mr. Wilhelmson. Let me pass  
5 out the map and offer that.

6 A. The exchange boundary of the Regent  
7 exchange is outlined by the blue lines. Sometimes  
8 you can see them in total and other times they kind  
9 of blend in. But it is basically an exchange where  
10 we serve on average about 311 subscribers or  
11 members of the cooperative. And the exchange  
12 covers about, and I say about, 400 square miles.  
13 It could be plus or minus that amount. And it's  
14 all in Hettinger County. The Western Wireless  
15 tower is located approximately one mile south of  
16 the Regent central office. It's indicated, and  
17 it's hard to see on this map. We had to reduce it  
18 from a huge map down to an eight-and-a-half-by-  
19 eleven, so --

20 MR. MAUS: We would offer CTC Exhibit 1.

21 MR. BINEK: Any objection?

22 MR. DEJORDY: No objection.

23 MR. BINEK: CTC Exhibit 1 is admitted.

24 Q. (MR. MAUS CONTINUING) Mr. Wilhelmson, on  
25 the map have you put the words "Western Wireless

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1 tower" indicating where that tower is?  
 2 A. Yes, I have. It's right about in the  
 3 center right-hand side of the exchange area, just  
 4 south of a bunch of little dots that show the  
 5 Regent community -- the town of Regent.  
 6 Q. And what exchange is to the east and what  
 7 exchange is to the south of the Regent exchange?  
 8 A. South of the Regent exchange is our  
 9 Hettinger exchange and to the east is the Mott  
 10 exchange.  
 11 Q. Did Western Wireless request connection to  
 12 the Regent exchange?  
 13 A. Yes, they did.  
 14 Q. What was contained in that request?  
 15 A. We received what is understood as a  
 16 standard service request, ASR, on August 21st,  
 17 1998, for 2,000 DID numbers, or direct inward  
 18 dialed numbers, and a local T-1 circuit with six  
 19 trunks at Regent, North Dakota. The circuits and  
 20 the trunks were installed and turned up for service  
 21 on September 18th, 1998. And we have, I believe, a  
 22 copy of that request for service included.  
 23 Q. Is what we have marked as CTC Exhibit 2 a  
 24 copy of that request?  
 25 A. Yes, it is.

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1 MR. MAUS: At this time we would offer CTC  
 2 Exhibit 2.  
 3 MR. BINEK: Any objection?  
 4 MR. DEJORDY: No objection.  
 5 MR. BINEK: Exhibit CTC 2 is admitted.  
 6 Q. (MR. MAUS CONTINUING) Did anything in  
 7 that request indicate that it would be used for a  
 8 fixed wireless service?  
 9 A. Nothing.  
 10 Q. Can you explain the connection between  
 11 Consolidated and Western Wireless?  
 12 A. Yes. And you'll need to refer to our next  
 13 exhibit.  
 14 Q. Let me pass that out.  
 15 A. In referring to Exhibit No. 3, Western  
 16 Wireless ordered six trunks and 2,000 direct inward  
 17 dialed numbers to be connected to their cell site  
 18 at Regent. In addition, they requested a T-1  
 19 facility, which is a 24-channel capacity for  
 20 interconnection to their host switch at Bismarck.  
 21 We configured a T-1, which is 24 channels, on a  
 22 high bit rate digital subscriber line (an HDSL  
 23 line) copper facility to the cell site about one  
 24 mile south of the Regent central office. This  
 25 connection is standard within the industry for

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1 cellular, mobile, and wireline interconnection  
 2 services.  
 3 MR. MAUS: At this time we would offer CTC  
 4 Exhibit 3.  
 5 MR. BINEK: Any objection?  
 6 MR. DEJORDY: No objection.  
 7 MR. BINEK: CTC 3 is admitted. What do  
 8 you call this exhibit? Is there a name for it?  
 9 MR. MAUS: Diagram of connection.  
 10 THE WITNESS: Block diagram.  
 11 Q. (MR. MAUS CONTINUING) Had you received  
 12 previous requests from Western Wireless?  
 13 A. Yes. Western Wireless has the same type  
 14 of cellular mobile connection at Bowman. This  
 15 connection was put in place by Consolidated in  
 16 September of 1997 and resembles the same type of  
 17 request we received for Regent. The Bowman request  
 18 was for 1,000 direct inward dialed numbers and  
 19 eight trunks for the Western Wireless cell site in  
 20 the Bowman exchange and like the Regent request did  
 21 not specify its use for fixed cellular service.  
 22 Q. What are those lines used for?  
 23 A. They are used for their cellular mobile  
 24 customers that have service off the Bowman tower  
 25 site.

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1 Q. When did you first learn that Western  
 2 Wireless was using the lines in Regent for fixed  
 3 residential service?  
 4 A. My staff brought to my attention on  
 5 January 6th that Western Wireless was holding a  
 6 news conference at Regent on January 7th, 1999.  
 7 Q. What did you do?  
 8 A. Since I had a previous meeting scheduled  
 9 in Bismarck on Thursday, January 7th, I directed  
 10 that my staff attend the meeting to find out what  
 11 was going on. I returned to my office late on  
 12 January 7th and reviewed the report from my staff,  
 13 and on Friday, January 8th, I made numerous  
 14 telephone calls to determine if what they were  
 15 doing was legal without a negotiated competitive  
 16 interconnection agreement with Consolidated. After  
 17 having consulted at least a half a dozen industry  
 18 experts and our attorney, I made the decision to  
 19 disconnect the 2,000 direct inward dialed numbers  
 20 and six trunks on Monday, January 11th, 1999. At  
 21 the same time I made a call to the North Dakota  
 22 Public Service Commission to inform them of my  
 23 actions, and also we issued a letter informing the  
 24 North Dakota Public Service Commission and Western  
 25 Wireless.

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1 Q. What was the result of the disconnection?  
 2 A. I received three calls from  
 3 representatives of Western Wireless, including  
 4 their lawyer, who, among other things, threatened  
 5 me with a public relations nightmare. And in all  
 6 cases I referred the callers to our attorney. The  
 7 result of the disconnection was that none of the  
 8 three subscribers they reported to have had service  
 9 could receive incoming calls using the 563 prefix.  
 10 In all cases they always had outgoing calls and  
 11 service to 911 or any other location.  
 12 Q. Did this disconnection in any way affect  
 13 911 service or E911 service?  
 14 A. First, Hettinger County does not have E911  
 15 service. They have a modified 911 service that  
 16 connects them to the North Dakota State Radio  
 17 emergency center in Bismarck. In all cases the  
 18 subscribers, the three of them, would still have  
 19 been able to call 911 and be connected to the State  
 20 Radio if Western Wireless does in fact route them  
 21 to State Radio.  
 22 Q. How many Regent customers have  
 23 disconnected landline service from Consolidated, to  
 24 your knowledge?  
 25 A. At this time, none that I'm aware of.

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1 Q. Are the Western Wireless lines still  
 2 disconnected?  
 3 A. On January 13th, 1999, Consolidated  
 4 verbally offered to reconnect the 2,000 direct  
 5 inward dialed numbers and the trunks. Again, on  
 6 January 22nd, Consolidated formally offered through  
 7 the North Dakota Public Service Commission to  
 8 reconnect the trunks, but in both cases Western  
 9 Wireless either failed or refused to respond to  
 10 these offers. On February 1st, 1999, after we were  
 11 satisfied that this matter would be heard by the  
 12 North Dakota Public Service Commission,  
 13 Consolidated agreed to reconnect the numbers and  
 14 the trunks.  
 15 MR. MAUS: No further questions at this  
 16 time.  
 17 MR. BINEK: Mr. DeJordy, we've got about  
 18 ten minutes before we're going to have to recess.  
 19 MR. DEJORDY: Okay.  
 20 CROSS-EXAMINATION  
 21 BY MR. DEJORDY:  
 22 Q. Good morning, Mr. Wilhelmson.  
 23 A. Good morning.  
 24 Q. Can you explain why Consolidated  
 25 disconnected interconnection service and DID

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1 numbers previously provided to Western Wireless?  
 2 A. I believe I explained that in my  
 3 testimony.  
 4 Q. And your testimony is that it was a  
 5 violation of law -- that wireless residential  
 6 service was a violation of North Dakota law?  
 7 A. In my estimation or our estimation,  
 8 absolutely right.  
 9 Q. And was this action taken based upon the  
 10 competitive threat that was raised by wireless  
 11 residential service to Consolidated?  
 12 A. No.  
 13 Q. And you have never stated that it was in  
 14 relation to a competitive threat raised by wireless  
 15 residential service?  
 16 A. I don't believe so.  
 17 Q. Are you familiar with Section 49-03.1-08  
 18 of the North Dakota law?  
 19 A. Explicitly, no.  
 20 MR. DEJORDY: May I approach the witness?  
 21 MR. BINEK: Certainly.  
 22 Q. (MR. DEJORDY CONTINUING) I'm referring  
 23 the witness to that section of North Dakota law.  
 24 If you could just briefly read that.  
 25 A. "Complaint upon violation of chapter.

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1 Whenever a public utility engages, or is about to  
 2 engage, in construction or operation as described  
 3 in this chapter, without having secured a  
 4 certificate of public convenience and necessity as  
 5 required by this chapter, any interested  
 6 municipality, public authority, public utility,  
 7 corporation, limited liability company, or person  
 8 may file a complaint with the commission. The  
 9 commission thereupon, by its own motion, without  
 10 complaint, with or without notice, may order the  
 11 public utility complained of to cease and desist  
 12 the construction, operation, or other prohibited  
 13 activity until further order of the commission.  
 14 Upon hearing after due notice, the commission shall  
 15 order enforcement of this section with respect to  
 16 the offending public utility and prescribe just and  
 17 reasonable terms and conditions."  
 18 Q. Mr. Wilhelmson, why didn't Consolidated  
 19 follow the law and file a complaint with this  
 20 Commission as opposed to taking it upon themselves  
 21 to disconnect service to Western Wireless?  
 22 A. Because at the time it was determined by  
 23 the experts I talked to and our attorneys that  
 24 Western Wireless was indeed in violation of law and  
 25 did not have a public certificate -- or a

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1 certificate of public convenience and necessity and  
2 was providing a service that could be considered  
3 competitive.

4 Q. Based upon the reading of the law that you  
5 have just read, would you agree that the proper  
6 course of action would have been to file a  
7 complaint before the North Dakota Commission?

8 A. We eventually got that taken care of.

9 Q. In the meantime, service was disconnected  
10 for three weeks; is that correct?

11 A. That's exactly right.

12 MR. DEJORDY: I have no further questions.

13 MR. BINEK: Mr. Johnson.

14 CROSS-EXAMINATION

15 BY MR. JOHNSON:

16 Q. Mr. Wilhelmson, I guess you've indicated  
17 you talked to numerous parties prior to  
18 disconnecting, but it's my understanding that you  
19 did not talk to anyone at the Public Service  
20 Commission prior to disconnecting Western  
21 Wireless.

22 A. Not specifically -- prior to?

23 Q. Yes.

24 A. The same day, yes, but not prior to.

25 Q. And obviously then you didn't ask any

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1 person at the Public Service Commission or the  
2 Commissioners, themselves, for a determination as  
3 to whether the Western Wireless service was illegal  
4 or not?

5 A. At that point in time, no.

6 Q. The next question obviously would be, why  
7 not?

8 A. Well, probably a lot of confusion on the  
9 issue from the standpoint of whether the Commission  
10 had specific authority at that point in time or  
11 not.

12 Q. Were you aware of the statute referred to  
13 by Mr. DeJordy, the 49-03.1-08 statute --

14 A. Yes.

15 Q. -- prior to making a decision?

16 A. Yes.

17 Q. You elected to ignore that decision; is  
18 that correct -- or that statute?

19 A. Didn't ignore it. Just overlooked it.

20 Q. I guess it's my understanding that you  
21 have been in the telephone business a good number  
22 of years; is that correct?

23 A. A few, yes.

24 Q. And how many would that be?

25 A. Forty-two.

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1 Q. In your 42 years of experience are you  
2 aware of any other occasion when, that you're aware  
3 of, your telephone company has in a sense, I guess,  
4 taken action unilaterally to enforce a state law?

5 A. Not to my knowledge, no.

6 Q. I guess in the thought of resolving the  
7 issue here the question has been raised, you know,  
8 as you found out probably from your own  
9 investigation and from the testimony that's been  
10 given here, that there really is a gray area as to  
11 whether the fixed wireless service is regulated or  
12 not and should be regulated by a -- the North  
13 Dakota Public Service Commission. In some  
14 situations where you have the vagueness in the law,  
15 a company that comes in and acts under a reasonable  
16 belief that they're obeying the law is  
17 grandfathered in under the law, I guess. I'm  
18 wondering what your interpretation would be as to  
19 whether or not Western Wireless should be  
20 grandfathered in under the PC&N statute in this  
21 case.

22 A. There's one -- there's one word that  
23 hasn't been used here today at this point in time,  
24 and it's called "resale." And I believe all  
25 resellers in North Dakota are required to register

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1 with the North Dakota Public Service Commission.  
2 The services that were ordered up by Western  
3 Wireless were ordered up under tariff and not under  
4 a resale service, nor were they ordered up under a  
5 competitive local exchange carrier service. And so  
6 the issue is -- I don't think they should be  
7 grandfathered into anything.

8 Q. I'm not aware, did you raise the resale  
9 issue in your answer?

10 A. Not yet.

11 Q. Not yet. I mean, did you discuss that  
12 issue with your attorney prior to submitting the  
13 answer in this proceeding?

14 MR. MAUS: I'm going to object. I think  
15 that comes under what we call attorney-client  
16 privilege.

17 MR. BINEK: Objection sustained.

18 Q. (MR. JOHNSON CONTINUING) Were you aware  
19 of the resale issue prior to your filing your  
20 answer in this proceeding?

21 A. I hadn't thought about it at that point in  
22 time.

23 Q. And you obviously haven't amended your  
24 answer --

25 A. Not yet.

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1 Q. -- since you had time to think about it;  
 2 is that correct?  
 3 A. That's correct.  
 4 Q. A question -- a question we would have,  
 5 are you aware as to whether Western Wireless has a  
 6 certificate to resell or not?  
 7 A. I'm not aware. I do know that they have a  
 8 subsidiary corporation called Eclipse that has done  
 9 some negotiating with U S West. I don't know where  
 10 that stands at this point in time.  
 11 Q. And if Western Wireless did have a  
 12 certificate to resell, of course, your concern  
 13 would not be an issue here today; is that correct?  
 14 A. I think it would be a concern.  
 15 Q. Western Wireless is arguing that to force  
 16 them -- to force the company to get a certificate  
 17 pending what's going to happen at the FCC level  
 18 would be a regulatory burden on the company. The  
 19 previous witness indicated he realized that it was  
 20 a regulatory burden, but that sometimes there has  
 21 to be a balancing between burdens and benefits to  
 22 the consuming public. I guess, what is your  
 23 opinion as to whether requiring Western to get a  
 24 certificate in this case would be a regulatory  
 25 burden?

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1 A. I agree that there has to be a balancing  
 2 of burdens between the public and the company. My  
 3 opinion is that they need a certificate of public  
 4 convenience and necessity to provide a fixed  
 5 wireless service in any telephone company's  
 6 exchange. It isn't any different than a  
 7 competitive local exchange carrier required to get  
 8 a certificate of public convenience and necessity  
 9 to serve in Dickinson.  
 10 Q. Okay. And the question I would have for  
 11 you is: Would you agree then that requiring  
 12 Western Wireless to get a certificate would be an  
 13 exercise of a regulatory power over Western  
 14 Wireless?  
 15 A. Absolutely.  
 16 Q. And would you agree that certainly then  
 17 apparently, in your opinion, not all regulation is  
 18 bad in North Dakota; is that correct?  
 19 A. I've had to follow the rules with our  
 20 subsidiary corporations. I don't see why they  
 21 don't.  
 22 Q. And the Commission should be trying to  
 23 balance regulation with competition; is that  
 24 correct?  
 25 A. Under the terms of this discussion,

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1 absolutely.  
 2 Q. And sometimes regulation prevails over  
 3 competition and sometimes it doesn't apparently;  
 4 right? Would you agree with that statement?  
 5 A. I don't know if I would agree with that  
 6 specifically, but regulation does prevail from the  
 7 standpoint of requiring us to have a certificate of  
 8 public convenience and necessity to provide a  
 9 competitive service in somebody else's certified  
 10 territory.  
 11 Q. But if the Commission were encouraged to  
 12 or prompted to encourage competition, it would seem  
 13 that encouraging competition would be to not  
 14 require a certificate in this situation; would you  
 15 agree?  
 16 A. Do that again for me.  
 17 MR. BINEK: Mr. Johnson, it is noon. We  
 18 said we were going to break.  
 19 MR. JOHNSON: That's the last question.  
 20 If he can answer it, that will be my last  
 21 question.  
 22 MR. BINEK: Okay. Very good. I will  
 23 allow him to answer.  
 24 COMMISSIONER REINBOLD: I hope so.  
 25 Q. (MR. JOHNSON CONTINUING) The question,

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1 Mr. Wilhelmson, if the Commission is supposed to be  
 2 more competitively oriented, it would seem that not  
 3 requiring a certificate is more pro competition  
 4 than would be requiring a certificate. It seems  
 5 like the answer is obvious.  
 6 A. It might be obvious to you, but, I mean,  
 7 I've had to follow the rules on the other side of  
 8 it and I expect that somebody else would have to.  
 9 MR. JOHNSON: Right. I understand. Thank  
 10 you. That's all the questions I have.  
 11 MR. BINEK: Okay. We will recess at this  
 12 point and we hope to be back at about two o'clock.  
 13 The meeting the Commission has to go to is out of  
 14 the Capitol building. We will try to reconvene at  
 15 two o'clock or shortly thereafter. Thank you.  
 16 We're off the record.  
 17 (Recessed at 12:01 p.m. to 2:00 p.m.)  
 18 MR. BINEK: I think the point we were at  
 19 was questioning by the Commissioners, and call on  
 20 Commissioner Hagen.  
 21 COMMISSIONER HAGEN: No questions and no  
 22 elevator stories. In case any of you don't know,  
 23 14 of us got trapped on the elevator when we left  
 24 for lunch so we spent a half an hour of  
 25 togetherness.

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1 COMMISSIONER REINBOLD: I don't know what  
 2 elevator you were on. There were only 13 in mine.  
 3 COMMISSIONER HAGEN: You count better than  
 4 I do. That's why you taught geography.  
 5 COMMISSIONER REINBOLD: Is Bill Stegner  
 6 here? I thought I heard you.  
 7 MR. BINEK: Commissioner Reinbold, do you  
 8 have any questions?  
 9 COMMISSIONER REINBOLD: It's up to me.  
 10 Yeah, I think so. Thank you very much.  
 11 EXAMINATION  
 12 BY COMMISSIONER REINBOLD:  
 13 Q. Mr. Wilhelmson, when was Consolidated  
 14 formed? When were they formed?  
 15 A. 1962.  
 16 Q. What did you do, take a lot of different  
 17 companies and pull them together?  
 18 A. Two different companies.  
 19 Q. Oh, just two.  
 20 A. Two different companies.  
 21 Q. Okay. Now, this Regent exchange, is it  
 22 one of the larger ones, or is it larger or smaller  
 23 than the other exchanges that you have? How does  
 24 it compare in size and activity?  
 25 A. From the standpoint of total access lines

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1 in the cooperative, it's somewhere in the area of  
 2 about less than 10 percent.  
 3 Q. Less than 10 percent. Okay. The entire  
 4 episode from hookup to unhook and everything else  
 5 included, telephone calls, et al., got an awful lot  
 6 of media coverage. Did you notice that?  
 7 A. The threat must have been good.  
 8 Q. How do you -- you don't have to account  
 9 for it because you weren't necessarily responsible,  
 10 but how would we account for that much attention to  
 11 a relatively light hookup of three? You don't --  
 12 A. It's hard to imagine, Mr. Commissioner.  
 13 Q. All during the time that -- there was a  
 14 period of time you indicated that everybody could  
 15 call out but nobody could call in, there was a  
 16 couple weeks or something like that?  
 17 A. Yes.  
 18 Q. Were there ever any -- anybody imperiled  
 19 because of emergency and can't get out and can't  
 20 get ahold of anybody?  
 21 A. Not to my knowledge.  
 22 Q. Okay. You feel that you've lost revenue  
 23 as a result of this?  
 24 A. We haven't quantified potential loss in  
 25 revenue at this point in time, but I'm sure if we

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1 did, we would realize it.  
 2 COMMISSIONER REINBOLD: Okay. That's all  
 3 I have at this time. Thank you.  
 4 MR. BINEK: Commissioner Wefald, do you  
 5 have any questions?  
 6 COMMISSIONER WEFALD: I have no  
 7 questions.  
 8 MR. BINEK: Mr. Maus?  
 9 MR. MAUS: Just a couple, Mr. Examiner.  
 10 REDIRECT EXAMINATION  
 11 BY MR. MAUS:  
 12 Q. Mr. Wilhelmson, you were asked questions  
 13 about competition earlier. What is your opinion  
 14 about competition with regard to the -- as it  
 15 relates to this particular environment and this  
 16 activity?  
 17 A. The opinion I have is that competition  
 18 ought to be the same for everyone, and that is that  
 19 if one organization, whether it's a local exchange  
 20 carrier like Consolidated or its subsidiary  
 21 corporation, has to go through the maturations of  
 22 applying for and receiving a certificate of public  
 23 convenience and necessity to become a competitive  
 24 LEC, then everybody else ought to be treated the  
 25 same way. What's fair for one side of the industry

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1 is fair for the other side of the industry. And so  
 2 this business as we look at it from my perspective  
 3 is a competitive business, it's a competitive LEC  
 4 business, and based on the information we've read  
 5 in newspapers and articles across the state of  
 6 North Dakota, it's been well documented that it's  
 7 Western Wireless's intention to compete with the  
 8 rural companies in North Dakota and/or all the  
 9 telephone companies in North Dakota with fixed  
 10 wireless service. They haven't -- they have been  
 11 rather straightforward about that, I think, and I  
 12 guess to me, when you look at it from the  
 13 perspective that my grandfather gave me at one  
 14 point in time, he said if it walks like a duck and  
 15 quacks like a duck, then it must be a duck. And in  
 16 this case if it walks like a CLEC and talks like a  
 17 CLEC, it must be a CLEC, and it needs to -- they  
 18 need to follow the same rules that the rest of us  
 19 have.  
 20 Q. In other words, if you decrease regulation  
 21 on the wireless side, are you saying you should  
 22 also decrease regulation on the wire side to be  
 23 competitively neutral?  
 24 A. I think competitively neutral is good for  
 25 both sides of the fence.



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1 Q. How many customers -- WRS customers were  
 2 in Regent when you disconnected the line?  
 3 A. From the reports that we received from  
 4 Western Wireless, there were three in service at  
 5 the time.  
 6 Q. How many were in service at the time when  
 7 you reconnected the line?  
 8 A. We didn't have any way of knowing except  
 9 that I read in a national publication, TR Daily,  
 10 that there were 26 customers in total when the  
 11 reconnection happened on February 1st.  
 12 MR. MAUS: I don't have any other  
 13 questions.  
 14 MR. BINEK: Mr. DeJordy, I will allow you  
 15 to ask any questions you may have that came about  
 16 because of the redirect or questioning by Mr.  
 17 Johnson or the Commissioners.  
 18 MR. DEJORDY: Sure. Just one question.  
 19 RECROSS-EXAMINATION  
 20 BY MR. DEJORDY:  
 21 Q. Mr. Wilhelmson, you had stated in response  
 22 to Commissioner Reinbold's statement with respect  
 23 to whether any customer -- WRS customer was  
 24 imperiled by Consolidated's actions and I believe  
 25 your answer was no; is that correct?

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1 A. None to my knowledge.  
 2 Q. And I think you also previously testified  
 3 that the -- that there was no effect on the  
 4 provisioning or the availability of 911 service  
 5 because the disconnection of service only affected  
 6 incoming calls as opposed to outgoing calls; is  
 7 that correct?  
 8 A. I believe so.  
 9 Q. If a customer had made a 911 call and was  
 10 disconnected for some reason, would the PSAP be  
 11 able to call back that customer?  
 12 A. If they were calling from one of the 2,000  
 13 numbers, no.  
 14 MR. DEJORDY: No further questions.  
 15 MR. BINEK: Mr. Johnson?  
 16 MR. JOHNSON: Nothing here.  
 17 MR. BINEK: Commissioner Hagen?  
 18 COMMISSIONER HAGEN: No questions.  
 19 MR. BINEK: Commissioner Wefald?  
 20 COMMISSIONER WEFALD: No.  
 21 MR. BINEK: Commissioner Reinbold?  
 22 COMMISSIONER REINBOLD: No.  
 23 MR. BINEK: The witness is excused.  
 24 MR. MAUS: We would like to offer Exhibit  
 25 4, which is the direct testimony of Mr.

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1 Wilhelmson.  
 2 MR. BINEK: Any objection?  
 3 MR. DEJORDY: No objection.  
 4 MR. BINEK: Exhibit CTC 4 is admitted.  
 5 Do you have further witnesses to call, Mr. Maus?  
 6 MR. MAUS: We don't have further  
 7 witnesses. Mr. Sebbby would like to address some  
 8 things we would like in the record.  
 9 MR. SEBBY: First, responding to  
 10 Commissioner Wefald's request for some information  
 11 that was referred to in Mr. Meredith's testimony,  
 12 we have available here, and I'll leave them with  
 13 the examiner, two FCC decisions in 1998, CC Docket  
 14 No. 86-495 and for some reason 88-317. I believe  
 15 these are the correct numbers, but you'll find the  
 16 complete citation in Mr. Meredith's testimony. In  
 17 addition, his written testimony referred to another  
 18 order of the FCC in 1994. We don't have a copy of  
 19 that with us, but we'll obtain it and forward it to  
 20 the hearing examiner.  
 21 COMMISSIONER WEFALD: Thank you.  
 22 MR. SEBBY: And we believe that both  
 23 Commissioner Hagen and Commissioner Wefald referred  
 24 to copies of the FCC's First Report and Order of  
 25 August 1, 1996, in WT Docket No. 96-6, so I don't

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1 think we need to make copies of that available.  
 2 They're already here, as I understand.  
 3 In addition, we request the Commission to  
 4 take official notice of its records in the  
 5 following cases, all pursuant to North Dakota  
 6 Century Code 28-32-06, Subdivision 5, and this  
 7 agency's rules: Case No. PU-1693-97-269 affecting  
 8 the certificate of public convenience and necessity  
 9 requested by and granted to Eclipse, a subsidiary  
 10 of Western Wireless; Case No. PU-1792-98-67  
 11 affecting Eclipse and its interconnection agreement  
 12 with U S West; Case No. PU-1564-96-397 regarding  
 13 Western Wireless and its interconnection agreement  
 14 with U S West; Case No. PU-1636-97-74, this is the  
 15 public convenience and necessity proceeding  
 16 affecting the Consolidated CLEC in Dickinson that  
 17 was referred to by Mr. Wilhelmson in his testimony;  
 18 and PU-1762-97-571 also affecting the Consolidated  
 19 Dickinson CLEC, this case relating to the U S West  
 20 interconnection agreement; and, finally, the  
 21 pending Western Wireless ETC case, PU-1564-98-428.  
 22 This last reference is particularly pertinent  
 23 considering its reference to Western Wireless's  
 24 hope to provide service to all areas in North  
 25 Dakota, not just one small rural exchange, a

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1 situation which is hardly incidental. We believe  
2 all of these cases are appropriately referred to in  
3 the Commission's consideration of this case under  
4 the cited statute 28-32-06.

5 MR. BINEK: Do you have any comment, Mr.  
6 DeJordy?

7 MR. DEJORDY: No comment.

8 MR. BINEK: Since there is no comment, no  
9 objection, the Commission will take official notice  
10 of all of the cases that Mr. Sebbly cited. Do you  
11 have anything further, Mr. Maus?

12 MR. MAUS: No, we don't.

13 MR. BINEK: Mr. DeJordy, do you have  
14 anything further to present in the way of  
15 rebuttal?

16 MR. DEJORDY: No, I do not.

17 MR. BINEK: Do the parties wish to make  
18 very brief closing arguments or statements?

19 MR. MAUS: We do not, Mr. Examiner. We  
20 would prefer the written brief method.

21 MR. BINEK: Mr. DeJordy, is that  
22 satisfactory to you?

23 MR. DEJORDY: What was the comment?

24 MR. MAUS: We would prefer to do it in  
25 written briefs.

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1 MR. DEJORDY: Okay. That's fine with me.

2 MR. BINEK: As we visited in the  
3 prehearing conference this morning, the parties are  
4 going to be requesting copies of the transcript,  
5 and I will require both Western Wireless and  
6 Consolidated to file briefs and proposed findings  
7 of fact, conclusions of law for Commission  
8 consideration.

9 (Discussion had off the record.)

10 MR. BINEK: And we talked about a period  
11 of approximately 30 days after the transcript is  
12 prepared for briefing, so it looks like we're  
13 talking about six weeks out from this date.  
14 Anybody have a quick calculation of when that  
15 brings us to?

16 MR. MAUS: Close of business April 23rd.

17 MR. BINEK: Pardon me?

18 MR. MAUS: Close of business April 23rd.

19 MR. BINEK: That would be a Friday. It  
20 gives you a little more than six weeks. That  
21 should be satisfactory. It gives a little bit of  
22 leeway for the court reporter, as well, if she's  
23 not able to get the transcript out quite within the  
24 ten-day time period. So I'll require that briefs  
25 be simultaneously filed at the Commission's offices

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1 on or before April 23.

2 COMMISSIONER REINBOLD: I presume with all  
3 those directions, that precludes the opportunity of  
4 ruling from the bench today.

5 MR. BINEK: I wouldn't think you would  
6 want to rule from the bench today.

7 MR. JOHNSON: Mr. Examiner, could we ask,  
8 again, to remind the parties that we would like a  
9 disk -- electronic copy of the proposed findings?

10 MR. BINEK: Yes. I'm glad you mentioned  
11 that. I assume that will not be a problem for  
12 either of the parties.

13 MR. DEJORDY: No, it would not.

14 MR. BINEK: Okay. Is there anything else  
15 that either of the parties wish to discuss at this  
16 point?

17 MR. MAUS: Not on behalf of Consolidated.

18 MR. BINEK: Mr. DeJordy?

19 MR. DEJORDY: None here, as well.

20 MR. BINEK: I'll now call on the  
21 Commissioners for any closing remarks they would  
22 like to offer. Commissioner Hagen.

23 COMMISSIONER HAGEN: Thank you, Bill.

24 Thank you for conducting a good hearing. And thank  
25 you, Denise, too. She never says a word and gets

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1 everything hour after hour and that's pretty good.

2 We thank all of you for your patience.

3 Again, we know this is a very important hearing for  
4 all parties. We also found out that we can get  
5 along if we get trapped in an elevator, and I guess  
6 that's telling. We'll do our best. We have a good  
7 legal record and we'll look forward to your briefs  
8 and try to make a good decision.

9 MR. BINEK: Commissioner Wefald.

10 COMMISSIONER WEFALD: Thank you. All of  
11 the people who participated certainly gave good  
12 testimony today for us to consider. It was well  
13 thought out and well prepared and that makes our  
14 job easier and we look forward to reading your  
15 briefs and making a decision on these issues.

16 MR. BINEK: Commissioner Reinbold.

17 COMMISSIONER REINBOLD: Thank you. Good  
18 hearing, very interesting, and one of the most  
19 interesting points is that we started with a room  
20 full and normally, you know, we lose by attrition  
21 about every 15 minutes or half-hour, but it looks  
22 like we got the same crew that we started with, so  
23 there's a great deal of interest in this, not only  
24 here but across the country. Thank you very much.

25 MR. BINEK: Thank you, Commissioners. I

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1 want to thank Denise and thank everyone who  
2 participated in this proceeding. The hearing is  
3 closed.

4 (Concluded at 2:16 p.m., the same day.)

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1 CERTIFICATE OF COURT REPORTER

2

3 I, Denise M. Andahl, a Registered

4 Professional Reporter,

5 DO HEREBY CERTIFY that I recorded in

6 shorthand the foregoing proceedings had and made of

7 record at the time and place hereinbefore

8 indicated.

9 I DO HEREBY FURTHER CERTIFY that the

10 foregoing typewritten pages contain an accurate

11 transcript of my shorthand notes then and there

12 taken.

13 Bismarck, North Dakota, this 15th day of

14 March, 1999.

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\_\_\_\_\_  
Denise M. Andahl  
Registered Professional Reporter

# Kelsch Kelsch Ruff & Kranda P.L.L.P.

C.F. Kelsch  
1890-1987

Attorneys at Law  
Mandan, North Dakota

Professional Limited Liability Partnership  
\*CLA Member

WILLIAM C. KELSCH  
THOMAS F. KELSCH  
ARLEN M. RUFF  
THOMAS D. KELSCH  
TODD D. KRANDA\*  
TIMOTHY J. WAHLIN, P.C.  
ROB FORWARD, P.C.  
WILLIAM J. DELMORE

Collins & Main  
P.O. Box 1266  
Mandan, ND 58554-1266  
Phone (701) 663-9818  
Fax (701) 663-9810  
1-888-663-9818  
E-Mail kelsch@corpcomm.net

\*Also Licensed in Minnesota

March 3, 1999

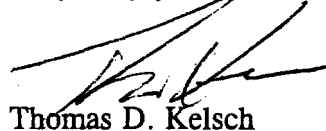
PUBLIC SERVICE COMMISSION  
12<sup>TH</sup> & 13<sup>TH</sup> FL DEPT 408  
600 E BLVD AVE  
BISMARCK ND 58505

RE: Western Wireless Corporation dba Cellular One v. Consolidated Telephone Cooperative  
Case No. PU-1564-99-17  
Our File No. 8306

Dear Sirs:

Enclosed for filing is the Affidavit of Service by Mail concerning the service of the Answer and Motion to Dismiss Counterclaim. Thank you for your attention to this matter. If you have any questions please contact me.

Very truly yours,



Thomas D. Kelsch

ve  
Enc

c: Western Wireless Corporation



telecommunications service, including Wireless Residential Service ("WRS"), over its cellular licenses by the Federal Communications Commission ("FCC"). Second, WRS is exempt under 47 U.S.C. § 332(c)(3)(A) from state entry and rate regulation, because, as a hybrid fixed/mobile service, it is classified as a Commercial Mobile Radio Service ("CMRS"). Lastly, to the extent there is any confusion as to the regulatory status of a service offering such as WRS, the FCC has opened a rulemaking proceeding to address this matter and has proposed to establish a rebuttable presumption that fixed wireless offerings would be regulated as CMRS offerings exempt from state entry and rate regulation. Consequently, given the pendency of this proceeding, it would be imprudent for this Commission to address this matter at this time. We discuss each of these points at greater length below.

First, Western Wireless holds all regulatory authorizations necessary for its WRS offering in Regent. The FCC has issued the necessary licenses for Western Wireless to provide cellular service in Regent. Section 22.901(d) of the Commission's rules, 47 C.F.R. § 22.901(d), provides that "[l]icensees of cellular systems may . . . provide fixed services on a co-primary basis with their mobile offerings, including personal communications services[.]" <sup>1/</sup> In the order adopting this provision, the FCC stated:

We agree with the many commenters that support the Commission's proposal to allow CMRS providers to offer fixed wireless services. \* \* \* \* [One] concept of fixed wireless access includes not just low-power wireless "drops" from the street to the home, but also fixed wireless architectures that would link end

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<sup>1/</sup> See also 47 C.F.R. § 24.3 (according same treatment to broadband personal communications service ("PCS") licensees).

users to the public switched network through cellular switches, and remote base stations (in rural areas). \* \* \* \* Rather than limit the flexibility of carriers . . . , we prefer to encourage innovation and experimentation through a [ ] flexible standard.<sup>2/</sup>

Significantly, the Commission observed that such regulatory flexibility “would have significant public interest benefits by stimulating competition between wireless and wireline telephony.”<sup>3/</sup>

Second, WRS is exempt from state entry and rate regulation under Section 332(c)(3)(A) of the Communications Act of 1934, as amended (“Act”), 47 U.S.C. § 332(c)(3)(A), because it is CMRS. WRS is not merely a fixed service -- it includes a significant mobile component and can best be characterized as a hybrid fixed/mobile service. WRS is provisioned using a hybrid fixed/mobile network architecture, consisting of customer premise equipment (“CPE”) that allows for the use of existing telephones and other household devices. The CPE simulates “dial tone” and can be connected to household telephones, facsimiles, and other devices in the home. The CPE operates using AC power (which can be plugged into an electrical outlet anywhere), has battery back-up power (which allows full mobility), and can be connected to a small 5-inch antenna or a large high-gain antenna. This hybrid fixed-mobile service, which uses the cellular network infrastructure, including switching, trunking, cell site equipment, and antenna towers, is clearly CMRS.

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<sup>2/</sup> *Amendment of the Commission’s Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services*, 11 FCC Rcd 8965, 8974, ¶ 19 (1996) (footnotes omitted) (“*CMRS Flexibility Order*”).

<sup>3/</sup> *Id.* at 8975, ¶ 20.

Third, in a recent Notice of Proposed Rulemaking, the FCC proposed to establish a rebuttable presumption that fixed wireless offerings would be regulated as CMRS offerings subject to FCC regulation -- and therefore exempt from regulation by the states -- under Section 332 of the Act.<sup>4/</sup> Specifically, the FCC “propose[d] to establish a rebuttable presumption that any wireless service provided under a CMRS provider's license would be considered to come within the definition of CMRS and consequently regulated as CMRS.”<sup>5/</sup> The FCC also sought comment on its proposal to require that a state commission would “have to petition the Commission under Section 332(c)(3), and the Commission would have to grant such a petition, *before* a CMRS provider's fixed wireless service would be subject to state regulation.”<sup>6/</sup> Notably, the Commission recognized, in the context of a discussion regarding Section 251 of the Act (dealing with interconnection),<sup>7/</sup> that a CMRS provider offering fixed service “could still be considered engaged in the provision of CMRS under Section 332 and therefore exempt from states’ regulation of intrastate rates.”<sup>8/</sup>

In view of these FCC policies and proposed regulations, it would be precipitous at present for this Commission to impose regulatory burdens on hybrid fixed/mobile CMRS offerings that would conflict with Section 332. Any such action that conflicts with Section 332, would be subject to federal preemption. In the meantime,

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<sup>4/</sup> *CMRS Flexibility Order*, 11 FCC Rcd at 8985-99, ¶¶ 46-57 (in Further Notice of Proposed Rule Making portion of *CMRS Flexibility Order*, seeking comment on extent to which fixed offerings authorized by Order would constitute provision of CMRS offerings exempt from state regulation).

<sup>5/</sup> *Id.* at 8987, ¶ 53 (emphasis added).

<sup>6/</sup> *Id.* at 8988-8989, ¶ 56 (emphasis added).

<sup>7/</sup> 47 U.S.C. § 251.

<sup>8/</sup> *CMRS Flexibility Order*, 11 FCC Rcd at 8989, ¶ 57.



fixed wireless services are already subject to the FCC's jurisdiction, so that state efforts to adopt additional regulations would constitute serious regulatory burdens -- with little or no justification -- that are likely to be preempted.

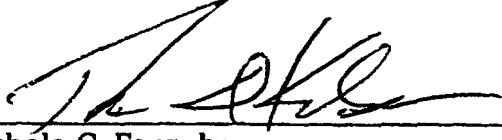
In sum, there is no basis for Consolidated Telephone's position that Western Wireless must subject itself to regulation by this Commission before lawfully offering WRS to consumers in Regent. Western Wireless respectfully requests that the Commission dismiss the request of Consolidated Telephone for an order requiring Western Wireless to cease and desist from providing its WRS offering in Regent.

Respectfully submitted,

WESTERN WIRELESS CORPORATION

Gene DeJordy  
Executive Director of  
Regulatory Affairs  
WESTERN WIRELESS  
CORPORATION  
3650 - 131st Ave., S.E., Suite 400  
Bellevue, WA 98006  
(425) 586-8055

By:

  
Michele C. Farquhar  
David L. Sieradzki  
Ronnie London  
HOGAN & HARTSON, L.L.P.  
Columbia Square  
555 Thirteenth Street, N.W.  
Washington, D.C. 20004-1109  
(202) 637-5600

Thomas D. Kelsch  
State Bar ID No. 03918  
KELSCH, KELSCH, RUFF & KRANDA, PLLP  
Collins & Main, P.O. Box 1266  
Mandan, North Dakota 58554-1266  
(701) 663-9818

Counsel for Western Wireless Corporation

Dated: March 3, 1999

**Before the**  
**Public Service Commission of North Dakota**

In the Matter of	)	
	)	
Western Wireless Corporation,	)	Case No. PU-1564-99-17
d/b/a Cellular One,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Consolidated Telephone Cooperative,	)	
	)	
Defendant.	)	
	)	

**AFFIDAVIT OF SERVICE BY MAIL**

STATE OF NORTH DAKOTA     )  
  ) ss.  
COUNTY OF MORTON         )


Valerie Ehrlich, being first duly sworn, on oath, deposes and says: That she is a citizen of the United States, over the age of eighteen and not a party to the above-entitled action.

That on the 3rd day of March, 1999, this affiant deposited in the United States Post Office at Mandan, North Dakota, a true and correct copy of the following document(s) in the above captioned action:

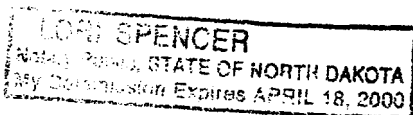
1. Answer and Motion to Dismiss Counterclaim.

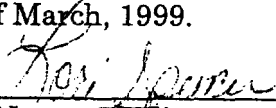
That a copy of the above document(s) was securely enclosed in an envelope with postage duly prepaid, and addressed as follows:

MICHAEL J MAUS  
ATTORNEY AT LAW  
PO BOX 370  
DICKINSON ND 58602-0370

  
\_\_\_\_\_  
Valerie Ehrlich

Subscribed and sworn to before me this 3rd day of March, 1999.



  
\_\_\_\_\_  
Notary Public

2/09/99

BEFORE THE  
PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

In the Matter of	)	
	)	
Western Wireless Corporation,	)	
d/b/a Cellular One,	)	
	)	
Complainant,	)	
	)	Case No. PU-1564-99-17
vs.	)	
	)	
Consolidated Telephone Cooperative,	)	
	)	
Respondent.	)	

ANSWER AND COUNTERCLAIM

Consolidated Telephone Cooperative ("Consolidated"), Respondent, for its Answer to the Complaint of Western Wireless Corporation ("Western Wireless") dated January 15, 1999, states as follows:

I.

Consolidated admits the first sentence of paragraph 1, but denies the second insofar as it implies that all telecommunications services provided by Western Wireless are Commercial Mobile Radio Services subject to Section 332 of the Act. Consolidated is without information or belief as to other states in which Western Wireless may provide service or the addresses and telephone numbers of its business locations and therefore denies those allegations.

II.

Consolidated admits the allegations of paragraph 2:

III.

As to paragraph 3, Consolidated admits that it provides local exchange service in Regent utilizing its own facilities, but

otherwise denies the allegations.

IV.

Consolidated admits the allegation in paragraph 4 that in August, 1998, Western Wireless requested and received direct inward dialing service which include access to 2000 telephone numbers, and otherwise denies the allegations of this paragraph.

V.

With regard to the allegations in paragraph 5, Consolidated admits that Western Wireless has used the trunk and some of the local telephone numbers to provide wireless telecommunications services, but denies that Western Wireless has timely paid in full. Consolidated admits that Western Wireless' WRS offering provides competitive local exchange service, but denies that Western Wireless can offer such service without complying with state law to include Application for a Certificate of Public Convenience and Necessity.

*WWS did  
not say  
this*

VI.

Consolidated admits that CMRS carriers licensed by the FCC may offer fixed services over their authorized spectrum, but denies any implication that the cited order precludes the North Dakota PSC from regulating the fixed service.

VII.

Consolidated is without information or belief as to how many customers may have subscribed to WRS service and therefore denies paragraph 7.

VIII.

Consolidated admits it disconnected DID service to Western Wireless on January 11 and states that the service was reconnected on February 1, 1999. Consolidated is without information or belief as to how or whether Western Wireless may have learned of the

disconnection before being notified by Consolidated and therefore denies that portion of the allegation. As to the allegation in paragraph 9 of the Complaint, Consolidated denies that service was disconnected with the intent of preventing Western Wireless from provided competitive telecommunications services. Now that DID service is reconnected, Western Wireless is not impaired in offering WRS service insofar as it is incidental use of its assigned frequency.

incident?

IX.

In response to paragraph 10, Consolidated admits that some of Western Wireless' customers may have had their service impaired, but denies that they were unable to receive calls from the public switch network.

X.

Consolidated is without knowledge or belief as to the allegation in paragraph 11 that Western Wireless has incurred loss of revenues or customer goodwill, and therefore denies the allegations.

**UNJUST AND UNREASONABLE DISCRIMINATION**

Consolidated denies that its actions were unlawful or that it made any unjust or unreasonable discrimination in connection with communication service, and affirmatively allege that disconnection of the lines in Regent, North Dakota, was the result of the failure of Western Wireless to comply with applicable federal and state laws and regulations. Consolidated further alleges that the provisions of Section 49-21-07, NDCC, do not apply to Western Wireless.

**DUTY TO INTERCONNECT**

Consolidated alleges that the duty to interconnect as provided in Section 49-21-09, NDCC, is premised upon an application by

Western Wireless for a Certificate of Public Convenience and Necessity and a determination by the North Dakota Public Service Commission, after hearing, that a physical connection can reasonably be made and that public convenience and necessity is subserved thereby.

#### **DUTY TO TRANSIT TELECOMMUNICATIONS OF OTHER COMPANIES**

Consolidated alleges that its duty to transfer telecommunications of Western Wireless is premised upon Western Wireless complying with applicable federal and state laws and regulations.

#### **UNLAWFUL DISCONTINUANCE OF TELECOMMUNICATIONS SERVICES**

Consolidated alleges that N.D. Admin. Code 69-09-05-02-1 does not apply to the situation with Western Wireless and that any duty to continue telecommunications service is premised upon Western Wireless first complying with applicable federal and state laws and regulations.

#### **DUTY TO INTERCONNECT UNDER THE 1996 ACT**

Consolidated denies that the discontinuation of services to Western Wireless was a violation of 251(a)(1) of the Federal Telecommunications Act.

#### **DIALING PARITY**

Consolidated denies that the discontinuation of services to Western Wireless was a violation of §251(b)(3) of the Federal Telecommunications Act.

#### **ACCESS TO TELEPHONE NUMBERS**

Consolidated denies that it has violated §51.217(c)(1) of the Federal Communications Commission's rules.

#### **COUNTERCLAIM**

Consolidated, for its Counterclaim against Western Wireless Corporation, d/b/a Cellular One, hereby alleges as follows:

XI.

Incorporates by reference the Answer as set forth above.

XII.

That Western Wireless Corporation has engaged in competitive local exchange carrier activities without proper authority, specifically that Western Wireless has entered the Regent exchange area without complying with the requirements of Chapter 49-03.1 and §49-21-08, NDCC.

WHEREFORE, Consolidated Telephone Cooperative requests that the Commission deny the request of Western Wireless to immediately reinstate service as that issue is moot; deny the request for injunction by Western Wireless, and enter an Order that Western Wireless cease and desist from providing fixed wireless service in Regent until such time as it has complied with North Dakota law.

Dated this 8th day of February, 1999.

HOWE, HARDY, GALLOWAY & MAUS, P.C.  
Attorneys for Respondent  
137 First Avenue West, P.O. Box 370  
Dickinson, ND 58602-0370

By: 

Michael J. Maus (#03499)

KRASKIN, LESSE & COSSON, LLP  
Attorneys for Respondent  
2120 L Street, N.W., Suite 520  
Washington, D.C. 20037

**CERTIFICATE OF MAILING**

A true and correct copy of the foregoing ANSWER was on the 8th day of February, 1999, mailed to Hogan & Hartson, L.L.P., Columbia Square, 555 Thirteenth Street, N.W., Washington, D.C. 20004-1109;

HOWE, HARDY,  
GALLOWAY & MAUS, P.C.  
ATTORNEYS AT LAW  
P.O. BOX 370  
DICKINSON, ND 58602-0370



Gene DeJordy, Executive Director of Regulatory Affairs, Western Wireless Corporation, 3650 131st Avenue, S.E., Suite 400, Bellevue, WA 98006 and Thomas D. Kelsch, Attorney at Law, P.O. Box 1266, Mandan, ND 58554-1266.

  
Michael J. Maus